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SUPREME COURT, U.S.

NO. 80-5399

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

ORIGINAL COPY

PAUL WILLIAM JORDAN,

Petitioner,

-vs-

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DID THIS COURT'S ORDER VACATING PETITIONER'S DEATH SENTENCE AND REMANDING THE CASE FOR FURTHER PROCEEDINGS IN LIGHT OF LOCKETT V. OHIO, 438 U.S. 586 (1978), PRECLUDE THE ARIZONA COURT FROM RESENTENCING APPELLANT?

II. PETITIONER WAS TWICE SENTENCED TO DEATH UNDER THE PROCEDURES OF ARIZ.REV.STAT.ANN. § 13-454. A PORTION OF THE STATUTE WAS FOUND UNCONSTITUTIONAL AND SEVERED. MAY PETITIONER BE RESENTENCED UNDER THE JUDICIALLY CORRECTED STATUTE WITHOUT VIOLATION OF THE EIGHTH AMENDMENT, THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE, AND THE DOUBLE JEOPARDY AND EX POST FACTO GUARANTEES OF THE UNITED STATES CONSTITUTION?

III.(a) IS A SENTENCE OF DEATH CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT, FOR A CONVICTION UNDER FELONY-MURDER JURY INSTRUCTIONS WHERE THERE IS SUBSTANTIAL EVIDENCE THAT THE ACCUSED COMMITTED THE MURDER INTENTIONALLY?

III.(b) IS IT AN IMPROPER ALLOCATION OF THE BURDEN OF PROOF TO REQUIRE PETITIONER TO ESTABLISH THE EXISTENCE OF MITIGATING CIRCUMSTANCES?

IV.(a) DOES IT AMOUNT TO FREAKISH APPLICATION OF THE DEATH PENALTY TO PERMIT USE OF CONVICTIONS, WHICH OCCURRED AFTER COMMISSION OF THE HOMICIDE, AS AGGRAVATING CIRCUMSTANCES?

IV.(b) DO THE ARIZONA COURTS GENERALLY REFUSE TO CONSIDER MITIGATING CIRCUMSTANCES, USE THE WATSON CASE AS A FRAUD ON THE FEDERAL COURTS, AND APPLY THE DEATH PENALTY ARBITRARILY, CAPRICIOUSLY, AND FREAKISHLY?

IV.(c) DID THE COURT ERR IN REFUSING TO FIND THE EXISTENCE OF MITIGATING CIRCUMSTANCES IN PETITIONER'S CASE?

STATEMENT OF THE CASE

On January 15, 1974, petitioner robbed a grocery store and killed the proprietor. He was convicted of murder in the first degree and sentenced to death. The Arizona Supreme Court affirmed the judgment and sentence. State v. Jordan, 114 Ariz. 452, 561 P.2d 1224 (1976).

This Court subsequently issued its opinion in Lockett v. Ohio, 438 U.S. 586 (1978). The same date, this Court granted petitioner's first petition for writ of certiorari, vacated the sentence of death, and remanded the case for further proceedings in light of Lockett v. Ohio. Jordan v. Arizona, 438 U.S. 911 (1978).

On September 7, 1978, the Arizona Supreme Court, pursuant to State v. Watson, 120 Ariz. 441, 586 P.2d 1253 (1978), cert. denied, 440 U.S. 924 (1979), and Ariz.Rev.Stat.Ann. § 13-454 (1973), ordered that the case be remanded to the trial court "for sentencing after a new aggravation-mitigation hearing." That hearing was held on December 15, 1978. At the hearing, petitioner presented as mitigation, one witness and 7 exhibits. He sought to show that he had cooperated with the police, that he had no intent to kill, and that he was influenced by drugs and alcohol. The 7 exhibits introduced were police reports, petitioner's confession to the murder, and various pleadings and documents pertaining to the case. The one witness was petitioner's girl friend. She had been with him in Phoenix at the time of the murder, and had traveled with him afterwards. She testified to his alcohol and drug habits while she knew him, and on the day of the murder. (R.T. of Dec. 15, 1978, at 9-17, 27-31.)

In addition to the testimony and exhibits, petitioner argued to the trial court that the aggravation found at the

initial sentencing in 1974 was faulty. This probably was thought necessary because of the court's order for a "new aggravation-mitigation hearing." His contention was that the Texas robbery convictions used to satisfy subsections (E)(1) and (E)(2) of Ariz.Rev.Stat.Ann. § 13-454 were not "prior" convictions because they occurred after January 15, 1974, the date of the murder. (R.T. of Dec. 15, 1978, at 37-38.) Petitioner also argued in regard to aggravation that the murder was not heinous and cruel within Ariz.Rev.Stat.Ann. § 13-454(E)(6). (R.T. of Dec. 15, 1978, at 35-36.)

At the conclusion of the "new aggravation-mitigation hearing," the trial court found the following aggravating factors: (1) under § 13-454(E)(1), petitioner had 4 prior robbery convictions in Texas; (2) under § 13-454(E)(2), petitioner had the same 4 prior robbery convictions in Texas; (3) under § 13-454(E)(5), taking the money in the robbery was the receipt by appellant of something of pecuniary value; and (4) under § 13-454(E)(6), the murder was heinous and cruel. No mitigation was found and, again, a penalty of death was imposed. (R.T. of Dec. 20, 1978, at 8-9, 14.) The Arizona Supreme Court affirmed the judgment and sentence, based on the first two aggravating circumstances, finding it unnecessary to consider the additional aggravating circumstances found at the second hearing. State v. Jordan, ___ Ariz. ___, 614 P.2d 825 (1980).

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ARGUMENT

I

RESENTENCING PETITIONER AFTER THIS COURT REMANDED THE CASE FOR FURTHER PROCEEDINGS IN LIGHT OF LOCKETT V. OHIO DOES NOT VIOLATE THE MANDATES OF THIS COURT.

Petitioner contends that resentencing him to death violates the mandate of this Court, which vacated the original sentence of death. (Petitioner's Question Presented No. I.) He claims that the order of this Court did not authorize a resentencing. However, the order of the Court remanded the case "for further proceedings" in light of Lockett v. Ohio, supra. Clearly, the sentence of death was vacated because, due to Arizona's procedure at the time, petitioner was limited in what he could offer in mitigation. The Arizona Supreme Court did nothing to violate the mandate of this Court in ordering a new sentencing hearing conforming to the Lockett requirements. The fact that other jurisdictions were not able to interpret their statutes to permit such a resentencing, and were, therefore, forced to commute death sentences, does not mean Arizona has failed to scrupulously carry out this Court's order.

ARGUMENT

II

THERE BEING NO TRUE CONFLICT AMONG COURTS, NO DOUBLE JEOPARDY SITUATION, NO EX POST FACTO VIOLATION, AND A VALID SEVERANCE OF THE STATUTE, PETITIONER PRESENTS NO SUBSTANTIAL CHALLENGE TO THE SENTENCING PROCEDURES UTILIZED.

A. The Arizona Court properly severed subsection F of Ariz.Rev.Stat.Ann. § 13-454 (1973).

In Richmond v. Cardwell, 450 F.Supp. 519 (D.Ariz. 1978), the court held that, because Arizona's death penalty statute was too restrictive in terms of the mitigating

circumstances that the trial court could consider, the statute was invalid to that extent. Later that year, the Arizona Supreme Court held that the constitutional and unconstitutional portions of Arizona's death penalty statute were severable, and that the constitutional portion remained in full force and effect. State v. Watson, 120 Ariz. 441, 445, 586 P.2d 1253, 1257 (1978), cert. denied, 440 U.S. 924 (1979). The Watson Court then remanded the case for resentencing in order to give Watson the opportunity to present any evidence in mitigation. (Id.)

Petitioner assails the Arizona Supreme Court's action as a judicial "rewriting" of the statute. Petitioner fails to note that, when the Arizona Legislature did amend the statute on May 1, 1979, it amended it in a fashion that was wholly consistent with the Arizona Supreme Court's language and holding in Watson. In any event, the Arizona Supreme Court correctly held that the statute was severable. In United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968), this Court held that the Federal Kidnapping Act was not entirely invalid merely because the punishment clause violated the Fifth and Sixth Amendments to the United States Constitution. In so holding, this Court reiterated the following language employed in Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed.2d 1062 (1932):

> Unless it is evident that the legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law.

286 U.S. at 234. The Jackson Court went on to note as follows:

> The clause in question is a functionally independent part of the Federal Kidnapping

> Act. Its elimination in no way alters the substantive reach of the statute and leaves completely unchanged its basic operation. Under such circumstances, it is quite inconceivable that the Congress which decided to authorize capital punishment in aggravating kidnapping cases would have chosen to disgard the entire statute if informed that it could not include the death penalty clause now before us.

390 U.S. at 586. Similarly, there is no reason to believe that the Arizona Legislature would have done away with Arizona's death penalty if it had known that the original penalty provision was invalid. The Arizona Supreme Court properly held that the statute was severable. See also Buckley v. Valeo, 424 U.S. 1, 109, 96 S.Ct. 612, 677, 46 L.Ed.2d 659, 739 (1976); Harrison v. NAACP, 360 U.S. 167, 178, 79 S.Ct. 1025, 1031, 3 L.Ed.2d 1152, 1159 (1959).

B. Petitioner's constitutional protections against ex post facto laws and double jeopardy have not been violated.

On the basis of chapter 138, § 10, Laws 1973, petitioner argues that he has twice been placed in jeopardy. The provision relied on by petitioner states as follows:

> In the event the death penalty is held to be unconstitutional on final appeal, a person convicted of first degree murder or another offense punishable by death who has been sentenced to die shall be resentenced by the sentencing court to life imprisonment without possibility of parole until the person has served a minimum of 25 calendar years.

Petitioner's analysis does not take into account the fact that the death penalty itself has not been held unconstitutional. The single flaw discovered in Arizona's death penalty statute was a limitation on the factors which a defendant could introduce in mitigation of the death penalty. Once petitioner's "severability" argument is rejected, as the aforementioned authorities suggest it

should be, his double jeopardy claim has no merit. Section 10 never came into play, and thus petitioner did not "receive a life sentence by operation of law." Petitioner was sentenced to death under a statute that passed constitutional muster except with respect to one aspect of the penalty clause. That clause was severable from the remainder of the statute. Petitioner was then given the opportunity to present any and all circumstances in mitigation of his offenses. He was again sentenced to death. Although petitioner's argument might have merit if the entire statute, or at least a non-severable portion of the statute, had been declared unconstitutional, the argument has no merit under these circumstances. It is clear that, despite the unconstitutional limitation on mitigation evidence (which was severed), there was a death penalty "in effect" when petitioner was sentenced, so a rehearing in which a death sentence may again be imposed envisions no new, different or harsher penalty than the one petitioner faced from the beginning. Dobbert v. Florida, 432 U.S. 282 (1977); Ex parte Lange, 85 U.S. (18 Wall.) 163, 21 L.Ed. 872 (1873). Hence, the prohibition against ex post facto actions does not apply.

Furthermore, because the sentence imposed upon petitioner has never been anything other than death, his argument that the sentence violates the ex post facto clause, or in the alternative, the due process clause of the Fourteenth Amendment, must fail.

Petitioner's argument that there is a conflict among the states regarding application of Dobbert v. Florida, supra, is nothing more than an alternative argument on the ex post facto and double jeopardy issues. There is actually no conflict among the jurisdictions. The reason Dobbert applies in some jurisdictions and not others is

obviously due to differences in the various death penalty statutes.

In sum, there is no true conflict in decisions between state courts, no double jeopardy problem, and no ex post facto violation. There is no substantial reason for granting certiorari on these issues. (Petitioner's Question Presented No. II.)

C. The question of the constitutionality of State v. Watson has been decided adversely to petitioner by the federal district court, and is presently pending on appeal in the Ninth circuit.

On April 18, 1980, the federal district court entered its opinion upholding the constitutionality of the decision in Watson. Knapp v. Cardwell, No. CIV. 78-385 PHX. (CAM) (D.Ariz., Apr. 18, 1980). This case is a class action involving petitioner and the other 29 inmates presently on death row.[1] The decision by the federal district court has been appealed, and is presently pending before the Ninth Circuit Court of Appeals. Knapp v. Cardwell, No. 80-5419 (9th Cir., filed May 10, 1980). Respondent submits that, if this Court should want to review the Watson decision, it would be more advantageous to do so after the Ninth Circuit issues its opinion.

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1. Included in this group of 30 inmates are Luis Mata and Willie Luther Steelman, who have petitions for certiorari pending. Mata v. Arizona, No. 80-5228; Steelman v. Arizona, No. 80-5252. Also included are Larry Eugene Evans and Paris Carriger, whose petitions for certiorari were denied by this Court. Evans v. Arizona, No. 79-6752 (U.S., Oct. 6, 1980); Carriger v. Arizona, 444 U.S. 1049 (1980).

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ARGUMENT

III

PETITIONER'S ISSUES ON CRUEL AND UNUSUAL PUNISHMENT, BURDEN OF PROOF, AND THE DEATH SENTENCE IN FELONY-MURDER CASES, WARRANT NO REVIEW, HAVING BEEN FORECLOSED BY PRIOR DECISIONS OF THIS COURT.

This Court has made it abundantly clear that it will not waste its time reviewing cases which are clearly disposed of by its previous decisions. See, e.g., Zucht v. King, 260 U.S. 174 (1922); Palmer Oil Corp. v. Amerada Petroleum Corp., 343 U.S. 390 (1952). Here Petitioner raises an issue of the burden of proof being placed upon him at sentencing to demonstrate mitigating circumstances sufficient to render the death penalty inappropriate once death becomes an available option because an aggravating factor has been proved. (Petitioner's Question Presented No. III.C.) However, this Court has held that a burden of proof may be allocated to the defendant, even at the guilt-innocence stage. Patterson v. New York, 432 U.S. 197 (1977) (proof of affirmative defense). Under the Arizona death penalty statute, the defendant has the burden of showing anything only at the sentencing stage, after guilt has been determined, and only where an aggravating circumstance has been established. The principle established in Patterson clearly governs here, and so granting certiorari on the Petitioner's Question Presented No. III.C. would appear a poor exercise of judicial economy.

The application of the "preclusion by prior decision" rule is even more obvious with regard to the contention that the death penalty amounts to cruel and unusual punishment in violation of the Eight Amendment. (Petitioner's Question Presented No. III.A.) This Court has held that the death penalty is not per se cruel and

unusual punishment. Gregg v. Georgia, 428 U.S. 153 (1976). While the Eighth Amendment prevents imposition of punishments unauthorized by statute, the death penalty is authorized by valid Arizona statute. (See Argument II.) Having spoken directly to the issue, this Court need not address it again.

The question of applying the death penalty in a felony murder case (Petitioner's Question Presented No. IV) seems also to have been foreclosed by the various decisions in Lockett v. Ohio, supra. Justice Rehnquist flatly rejected the proportionalilty analysis utilized by Justice White. The plurality opinion, joined in by Justices Burger, Stewart, Powell, and Stevens, required only that all circumstances of the offense must be open to examination as mitigating factors. There was never any suggestion that death could not be imposed simply because the case was tried under a felony-murder rule. Justice Blackmun likewise demanded only that the defendant's degree of participation be a mitigating factor available for consideration in sentencing. That is precisely what was required by the Arizona statute, which included the following as specified mitigating factors, even before the Arizona Supreme Court severed the limitations on mitigation evidence:

> 3. He was a principal, under § 13-452, Arizona Revised Statutes, in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution.
>
> 4. He could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing, death to another person.

Ariz.Rev.Stat.Ann. § 13-454(F). See also Richmond v. Cardwell, 450 F.Supp. 519 (D.Ariz. 1978).

Therefore, the proceedings in petitioner's case fully complied with the standards set out in Lockett, and further

review is unnecessary. Should this Court feel that some amplification of Lockett is in order, this case would not seem to be an appropriate vehicle. When appellant confessed to the crime, he admitted that while he was taking money from the cash register the victim "looked like he was going for a pistol and I pulled out mine and shot him." Petitioner thus has little standing to argue that he will be unjustly victimized by a felony-murder statute. That he may have been convicted under felony-murder instructions is irrelevant to the fact that there was ample evidence before the sentencing authority to establish his actual, intentional commission of the murder. This was a "felony murder" only in the sense that the murder was joined to another felony; it was not an instance of an unintentional death occurring during a non-homicidal crime. No grant of certiorari is appropriate on these purported issues.

ARGUMENT

IV

THE DEATH PENALTY WAS NOT FREAKISHLY OR ARBITRARILY APPLIED; THE COURT PROPERLY FOUND THE EXISTENCE OF AGGRAVATING CIRCUMSTANCES AND NO MITIGATING CIRCUMSTANCES; THE WATSON DECISION IS NOT A FRAUD ON THE FEDERAL COURTS.

A. Aggravating Circumstances

Two of the aggravating circumstances found by the trial court and upheld by the Arizona Supreme Court were petitioner's four convictions for robbery in Texas in 1974. The murder which is the subject of this petition occurred January 15, 1974. Although the Texas crimes took place before January 15, 1974, the convictions for them were not obtained until a few months after that date. Petitioner argues that, because the robbery convictions followed the murder, and he was tried in

Texas before being tried in Arizona, the convictions cannot be aggravating circumstances.

Ariz.Rev.Stat.Ann. § 13-454 was drafted in response to the call of the United States Supreme Court in Furman v. Georgia, 408 U.S. 238 (1972), for a death penalty sentencing scheme that would focus and guide the consideration of the sentencing authority to those relevant factors of mitigation and aggravation that would ensure the reliability of a death penalty determination. Section 13-454 was not intended to freeze aggravation and mitigation at the time of the offense. That would be inimical to those things the statutory scheme was designed to achieve. If the purpose of the sentencing procedure is to guide and focus the trial court's consideration of the particularized circumstances of the individual offense and the individual offender, his character and propensities, the trial court must have the fullest information concerning the crime and the defendant's life and characteristics. See Lockett v. Ohio, supra, 438 U.S. at 603; Jurek v. Texas, 428 U.S. 262, 274 (1976); Woodson v. North Carolina, 428 U.S. 280, 303-04 (1976). Limiting consideration to those things existing at the time of the offense would not permit the informed choice that is necessary.

Petitioner's claim that extradition and the order of occurrence of trial and conviction in different states is "purely arbitrary" and an "irrelevant occurrence" overlooks the fact that these are decisions made by prosecutors and extradition authorities. In Gregg v. Georgia, supra, this Court recognized the fact that there are many opportunities for discretionary actions by government agencies in processing a murder case, but that this alone does not violate the principles set out in Furman v. Georgia.

Gregg v. Georgia, supra, 428 U.S. at 199. Petitioner has not been the victim of arbitrary and freakish application of capital punishment for this reason.

B. Mitigating Circumstances

Petitioner claims the Arizona courts have refused to consider mitigating circumstances, that the "Watson opinion is a fraud meant solely to pass federal court review without changing the reality of application in Arizona," and that application of the death penalty in Arizona, therefore, is arbitrary and capricious. These allegations are without basis in fact.

Since enactment of Ariz.Rev.Stat.Ann. § 13-454, the appeals of 44 death row inmates have been filed in the Arizona Supreme Court. Of those, 1 is presently awaiting resentencing, 19 are pending final decision, and 10 have had their sentences affirmed by the Arizona Supreme Court. However, 14 have had their sentences set aside either by the Arizona Surpeme Court or in the trial court. See Appendix A. Since the Watson decision, in two instances the court set aside the death sentence, finding that the aggravating circumstance that the crime was cruel, heinous or depraved, was not proved by the state. State v. Madsen, 125 Ariz. 346, 609 P.2d 1046 (1980); State v. Lujan, 124 Ariz. 365, 604 P.2d 629 (1979). See also State v. Brookover, 124 Ariz. 38, 601 P.2d 1322 (1979). The court has twice found the mitigating circumstance was sufficiently substantial to call for leniency. State v. Brookover, supra; State v. Doss, 116 Ariz. 156, 568 P.2d 1054 (1977). Any suggestion that the Arizona courts act as nothing more than a rubber stamp approving the prosecutor's request for the death penalty in every instance is unwarranted, and petitioner's claim that the Watson decision is a fraud and that the death penalty in

Arizona is being applied freakishly is without merit.

In the case at hand, the Arizona court did not arbitrarily conclude the offered mitigating circumstances did not exist. At the resentencing petitioner offered three things in mitigation: (1) his cooperation with the police, (2) his lack of intent to kill, and (3) his use of drugs and alcohol on the day of the murder.

Petitioner can hardly be commended for confessing and cooperating with the police. It was not out of altruism that he confessed. He confessed for selfish reasons that had nothing to do with helping the police solve the crime. He bartered with the authorities: what he knew of the crime in return for the dropping of charges against his girl friend and her release from jail.

Petitioner argues that there was no direct evidence that he had an intent to kill. He also states the homicide occurred unexpectedly during the course of the robbery, and that he fired his gun thinking the victim was reaching for a gun. In his statement, petitioner told the police that, as the victim was taking the money from the cash register, he "looked like he was going for a pistol and I pulled out mine and shot him." This seems quite intentional, hardly mitigative.

Nancy Willifred, petitioner's girl friend, and the object of the barter for his confession, testified at the resentencing that, while in Phoenix around the time of the murder, petitioner used drugs and alcohol. (R.T. of Dec. 15, 1978.) She testified that, on the day of the murder, petitioner had not been drinking "too much that day," and "had been taking more pills that day." (R.T. of Dec. 15, 1978, at 29.) When she last saw petitioner, which she estimated to be 4:00 or 5:00 in the afternoon, he was mumbling. She had no knowledge of his condition at the time of the crime. (R.T. of Dec. 15, 1978, at

30.) The trial court found Ms. Willifred's testimony "incredible, contrived and unworthy of belief." (R.T. of Dec. 20, 1978, at 8.)

Contrary to petitioner's claims, this testimony does not show him to be heavily under the influence of alcohol and drugs at the time the homicide occurred. It deserves little more attention than the trial court gave it. It is also interesting to note that in his confession, petitioner did not mention drugs, alcohol, or the effect they may have had upon him at the time of the crime. Imposition of the death penalty was not freakish or arbitrary.

CONCLUSION

It is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

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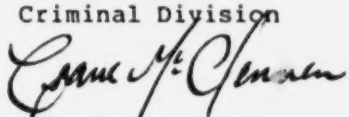

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APPENDIX A

DISPOSITION OF CAPITAL CASES FILED IN ARIZONA SUPREME COURT SINCE ENACTMENT OF ARIZ.REV.STAT.ANN. § 13-454

REDUCED TO LIFE BY ARIZONA SUPREME COURT -- AGGRAVATION NOT PROVED:

State v. Lee, 114 Ariz. 101, 559 P.2d 657 (1976)
State v. Lujan, 124 Ariz. 365, 604 P.2d 629 (1979)
State v. Madsen, 125 Ariz. 346, 609 P.2d 1046 (1980)
State v. Verdugo, 112 Ariz. 288, 541 P.2d 388 (1975)

REDUCED TO LIFE BY ARIZONA SUPREME COURT -- MITIGATION PROVED:

State v. Brookover, 124 Ariz. 38, 601 P.2d 1322 (1979)
State v. Doss, 116 Ariz. 156, 568 P.2d 1054 (1977)

RECEIVED LIFE IN TRIAL COURT AFTER REMAND:

State v. Edwards, 122 Ariz. 206, 594 P.2d 72 (1979)
State v. Mata (Alonzo), 125 Ariz. 243, 609 P.2d 58 (1980)
State v. Melendez, 121 Ariz. 1, 588 P.2d 294 (1978)
State v. Morales, 120 Ariz. 517, 587 P.2d 236 (1978)
State v. Rodriquez, ___ Ariz. ___, 612 P.2d 484 (1980)

CONVICTION REVERSED BY ARIZONA SUPREME COURT:

State v. Dunlap, 125 Ariz. 104, 608 P.2d 41 (1980)
State v. McDaniel, No. 4220 (Ariz.Sup.Ct., Sept. 11, 1980)
State v. Robison, 125 Ariz. 107, 608 P.2d 44 (1980)

AFFIRMED SENTENCE OF DEATH:

State v. Arnett, 125 Ariz. 201, 608 P.2d 778 (1980)
State v. Carriger, 123 Ariz. 335, 599 P.2d 788 (1979), cert. denied, 444 U.S. 1049 (1980)
State v. Ceja, ___ Ariz. ___, 612 P.2d 491 (1980)
State v. Clark, No. 4346 (Ariz.Sup.Ct., July 25, 1980)
State v. Evans, 124 Ariz. 526, 606 P.2d 16 (1980), cert. denied, No. 79-6752 (U.S., Oct. 6, 1980)
State v. Jordan, ___ Ariz. ___, 614 P.2d 825 (1980)
State v. Knapp, ___ Ariz. ___, 611 P.2d 90 (1979)
State v. Mata (Luis), 125 Ariz. 233, 609 P.2d 48 (1980)
State v. Smith (Sylvester), ___ Ariz. ___, 610 P.2d 46 (1980)
State v. Steelman, ___ Ariz. ___, 612 P.2d 475 (1980)

APPEAL ON RESENTENCING PENDING:

State v. Bishop, 118 Ariz. 263, 576 P.2d 122 (1978)
State v. Blazak, 114 Ariz. 199, 560 P.2d 54 (1977)
State v. Holsinger, 115 Ariz. 89, 563 P.2d 888 (1977)
State v. Richmond, 114 Ariz. 186, 560 P.2d 41 (1976)
State v. Smith (Joseph), 123 Ariz. 231, 599 P.2d 187 (1979)
State v. Valencia, 124 Ariz. 139, 602 P.2d 807 (1979)
State v. Watson, 120 Ariz. 441, 586 P.2d 1253, cert. denied, 440 U.S. 924 (1979)

REMANDED FOR RESENTENCING:

State v. Gretzler, ___ Ariz. ___, 612 P.2d 1023 (1980)

APPEAL PENDING -- NO PREVIOUS ARIZONA SUPREME COURT REVIEW:

State v. Britson, No. 4056
State v. Emery, No. 5001
State v. Greenawalt, No. 4611
State v. Jeffers, No. 4253
State v. McVay, No. 4604
State v. Ortiz, No. 4814
State v. Poland (Michael), No. 4970
State v. Poland (Patrick, No. 4969
State v. Schad, No. 4876
State v. Tison (Raymond), No. 4624
State v. Tison (Ricky), No. 4611
State v. Vickers, No. 4765

TOTAL AWAITING RESENTENCING:	1
TOTAL PENDING REVIEW:	19
TOTAL DEATH SENTENCE AFFIRMED:	10
TOTAL DEATH SENTENCE VACATED (ALL REASONS):	14
TOTAL	44